

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEELAMMA J. THANNIKARY and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 03-98; Submitted on the Record;
Issued February 4, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs, by its decision dated July 15, 2002, abused its discretion in refusing to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On April 30, 2001 appellant, then a 56-year-old parcel post distribution machine operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on January 20, 2000, when turning over a heavy magazine bundle, she felt sudden, severe left chest pain and pain in the upper back, left shoulder and left arm. By letter dated May 7, 2001, the employing establishment controverted the claim, alleging that appellant had indicated to her supervisor that she had a history of both high blood pressure and known heart problems.

In support of her claim, appellant submitted, *inter alia*, hospital notes that indicate she was seen in the emergency department of the University Community Hospital in Tampa on January 20, 2000 complaining of the onset of chest pains while she was working. Appellant was referred to radiology where x-rays were taken which indicated no active pulmonary disease. Appellant also submitted a doctor's note, with an illegible physician's signature, indicating that appellant was excused from work January 20 to 30, 2000, and could return to work on January 31, 2000.

By letter to the Office dated May 11, 2001, appellant denied that she had heart problems.

Appellant also submitted a May 8, 2001 report by Dr. Edward N. Feldman, appellant's treating orthopedic surgeon, wherein he indicated that appellant was injured at work on January 20, 2000. He diagnosed appellant with: (1) chronic impingement syndrome, left shoulder; and (2) rule out rotator cuff tear, left shoulder. He further indicated that appellant's objective findings and subjective complaints were related to the accident on the job of January 20, 2000. The record also contained a note from Dr. Feldman indicating that appellant

could return to work on May 9, 2001, performing light duty only with restrictions of no repetitive movement of the left arm and no overhead work utilizing the left arm.

Finally, appellant submitted a May 22, 2001 note from Dr. Ashok Bhat, a Board-certified internist, wherein he stated that appellant had been under his care since January 1998 and indicating that appellant has asymptomatic hypertension which was fairly well controlled with medication. He also noted that he saw appellant on January 25, 2000, five days after she was treated at the emergency room for left-sided cardiac pain.

By decision dated June 29, 2001, the Office denied appellant's claim as the medical evidence was insufficient to establish that her condition was caused by her employment on January 20, 2000.

By letter dated June 23, 2002, appellant requested reconsideration of her claim. In support thereof, appellant submitted her statement indicating that on January 20, 2000 she felt a sudden pain in her chest, left shoulder, left arm and upper back, and that she was taken to the emergency room by ambulance for treatment. She indicated that the doctor told her that she strained muscles which might have happened while lifting heavy magazine bundles. Appellant stated that she would like to work on light-duty status as she is concerned that this could happen again. Appellant also submitted an April 8, 2002 report of a magnetic resonance imaging (MRI) of the cervical spine which was interpreted as showing mild degenerative changes at C4-5 and C5-6, marked degenerative changes with disc space narrowing and osteophyte formation at C6-7.

By decision dated July 15, 2002, the Office found that the evidence submitted in conjunction with appellant's request for reconsideration was insufficient to warrant merit review of the earlier decision.

The only decision before the Board on this appeal is the Office's July 15, 2002 decision denying appellant's request for a review on the merits of its June 29, 2001 decision. Because more than one year has elapsed between the issuance of the Office's June 29, 2001 decision and October 16, 2002, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the June 29, 2001 decision.

The Board finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence and argument that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b)(2).

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law, nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office. The Office initially denied appellant's claim as she had not submitted medical evidence establishing that her condition was caused by her employment on January 20, 2000. Appellant's statement as to what a doctor said does not constitute medical evidence. The Board also notes that fear of future injury is not a basis for compensation.³ The only medical evidence appellant submitted on reconsideration, the results of the April 8, 2002 MRI, does not link appellant's condition to her employment on January 20, 2000. The Board has held that evidence that does not address the particular issue involved does not constitute a basis for reopening a claim.⁴ Therefore, appellant has not established that the Office abused its discretion in denying her request for review on the merits under section 8128(a) of the Act.

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 15, 2002 is affirmed.

Dated, Washington, DC
February 4, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ See *Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980).

⁴ See *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393 (1984).